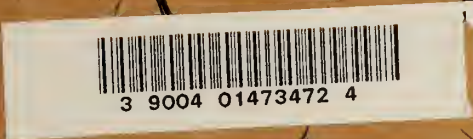


F5012.
1825
U69C



F
F5012
1825?
U69C



Digitized by the Internet Archive
in 2012 with funding from
Queen's University - University of Toronto Libraries

TO HIS EXCELLENCY SIR PEREGRINE MAITLAND, *Knight Commander of the
most Honorable military order of the Bath*, *LIEUTENANT GOVERNOR of the
Province of UPPER CANADA and MAJOR GENERAL commanding His
MAJESTY'S FORCES in North America, &c. &c. &c.*

MAY IT PLEASE YOUR EXCELLENCY.

THE Commissioners appointed under the authority of an act of the provincial parliament of Upper Canada, passed in the fourth year of his Majesty's reign, entitled, "An Act to provide for the appointment of commissioners to investigate the claims of certain inhabitants of this province for losses sustained by them, during the late war with the United States of America, and for other purposes therein mentioned.

MOST RESPECTFULLY REPORT,

THAT they have endeavored, to the utmost of their ability, to fulfil the duties for which they were constituted into a board, with a rigid impartiality towards the parties concerned, but the objects which those duties embraced, presented such an infinity of difficulties to surmount, that they have reason to fear, (however pure their intention, however anxious their desire to do what is right) that their judgment may, perhaps, in many instances, be called in question by those unacquainted with the multiplicity and intricacy of them. The great, the leading object, which the commissioners had in view, was to endeavor to establish such a general scale of values (upon that description of property which admitted of it) as would give to the moderate claimant, the same proportional remuneration, as to the individual who had estimated his loss by a too partial valuation of it in his own eyes; for, as may be seen by a reference to the claims, some sufferers have estimated their loss by the actual cost of the property destroyed; others, by what it would require to replace such loss at the highest war prices; and

others again, more modestly, at the current prices before the war. The commissioners, therefore, considered it a duty which they owed the public, to establish such a general scale of moderate averages as should prevent a probability of complaint (from those who might have to bear the burthen) that the interests of the many, were sacrificed to the claims of a few. The commissioners are fully aware that many of the claimants will feel themselves aggrieved at the great deductions made from their respective claims, in consequence of this feeling, but the commissioners could not, in the exercise of their judgment, suppress it, when they called to mind that many thousand inhabitants of this province must necessarily bear a part in any general contribution, which their award may occasion, who had no stake whatever therein, at the time these losses were incurred, having become settlers in the country subsequent to the war. Thus far, as to general principles which the commissioners have adopted, as well as to the motives that influenced that adoption. With respect to particular classes of claims, which they have felt it their duty to consider as altogether inadmissible,—the first and most prominent in amount as well as of importance as to precedent, is that of the loss of goods and vessels in transitu—in this decision they confidently trust that all, but the parties concerned, will uniformly concur; for what would be the consequence of a remuneration upon this head, in case of any future war? it would act as a bonus for the most hazardous risks—Speculators would be tempted from such a precedent of remuneration for the original cost of the article, to venture even upon an almost

certainty of capture, where the profits, if successful in escaping it, would be proportioned to the extra risk; so that the public would, in fact, be the only possible losers by those mercantile adventurers. As to the absurd argument made use of by some interested in advancing it, that the settlements on the frontier would not be supplied with their various wants, unless some such encouragement of indemnification was held out, it scarcely needs refutation, for a very slight knowledge of the spirit of commercial enterprise must convince every uninterested person, that there is no risk so hazardous, but some will be tempted to embark in it, where the extraordinary profits (as before remarked) hold out such strong inducements. The commissioners, after a long investigation into the circumstances, have thought it right to consider one particular claim which came before them, as an exception to the foregoing general rule, being the case of a vessel which was cut out of Fort Erie by the enemy, it appearing that she had sailed from Amherstburgh *under convoy*, and had been employed on that particular voyage, in conveying American prisoners from thence, and consequently might be considered as being partly engaged in government employ—it should further be remarked, that there was no claim for any cargo on board her.

Among the claims for loss of goods in transitu, is one preferred by Mr. Thomas McCormick, formerly of Queenston, which the commissioners are induced to represent as a special case, and which seems to merit the consideration of the government, from the peculiarity of the causes which led to the loss in question; but the loss itself, being precisely under similar circumstances with those of other claimants, the commissioners themselves would not venture to make it an exception to the general decision of "Inadmissible." The peculiarity of the case is this. The claimant, Thomas McCormick, had, by the irruption of the enemy, been lamentably burnt out of house and former means of livelihood, at Queenstown, the store which he kept there, being, with its contents, wholly destroyed. To support his family, he came over to

town, and it was the goods destined for it, that were captured in *transitu* on the lake, on their passage from Montreal. It therefore would appear, that it was the destruction by the enemy, in the first instance at Queenston, which drove him to the risk he incurred on the lake, and may therefore be perhaps considered in a different light from speculators who were not in like manner driven by *necessity* thereunto, but merely tempted to increase their ordinary gains by the great inducement which war-prices then held out to them.

The commissioners however cannot go the length of expressing any decided opinion upon the peculiarity of the case in question, but merely, in justice to the individual concerned, thus explain its *dissimilarity* from the others cases in transitu, *as far as the remote causes which led to it* are considered.

The second class which the commissioners have declared inadmissible, are claims for property lost within the territory of the United States of America—upon these the commissioners felt they had no discretionary power, the provincial act which governs their proceedings, having restricted all awards under that act, to losses sustained within the province, in which opinion the commissioners were borne out by that of His Majesty's Attorney General, to whom the case was referred. The commissioners however feel it but justice to some of the claimants thus circumstanced, to represent that there are peculiar cases, under this head, which would doubtless have experienced a different result, but for the restriction above recited.

The third class decided inadmissible, are claims for losses occasioned by Burglaries and other Felonies; these being considered misfortunes not necessarily confined to a state of warfare, and the police laws of the country not being resorted to at the time, to secure and indentify the perpetrators before the courts of Justice.—The commissioners after very mature deliberation, could not reconcile it to themselves, to burthen the public with

a remuneration upon this head, fearing that it might lead to an expectation, that Burglaries in any garrison town might, upon mere supposition, be fastened upon the soldiery.

The fourth class decided inadmissible, are claims for losses of army bills, specie and watches—two considerations influenced the commissioners in this decision—the first was, their being a description of property, which common precaution should have induced the owners to have placed beyond the reach of accidental plunder; and that therefore a distinction should be made between avoidable and unavoidable losses.—the second consideration was, the extreme danger of admitting claims for the loss of cash or notes, from the circumstance that the proof of the amount of the actual loss of this description of property could scarcely ever be satisfactorily supported by any corroborating testimony to that of the claimant; offering thereby a temptation too strong for any future occurrence of claim, to justify a precedent for admission now,—it may be proper to remark, that there is an isolated case of a loss of army bills, which the claimant might perhaps consider, should form an exception to the above general decision, from the circumstance of his having had the precaution of sending them off by a friend to Montreal, on progress to which they were taken by the enemy with the vessel in which they were on board; but as there was a regular inland post at the time, by which no such risk would have been incurred, the commissioners were of opinion, that the claimant became his own insurer against the enemy by the mode of conveyance adopted, and had consequently no just claim for remuneration.

The 5th class decided inadmissible, are claims for amounts unpaid by the commissariat or other military department for teaming &c. these the commissioners could not contemplate as being embraced within the act for remuneration for loss of property: had the claimants preferred the proper vouchers to establish their claims, before the department whom they concerned, it can scarcely be supposed,

but that they would have been long since paid with similar claims; some neglect or informality on the part of the claimant, must, it is presumed, have prevented the liquidation of them from the military chest; and the commissioners, therefore, do not feel authorised in throwing the burden of them upon the fund which may be hereafter destined to make good the several awards under the provincial act which governs their decisions—that act not appearing to embrace this description of claim. It may not be improper to remark, that the former board of claims, which sat at York, also deemed them inadmissible.

The 6th class are claims for rents of buildings, which although not, in every case, decided as altogether inadmissible, yet as many of the decisions thereupon have been in part founded upon the same principle as those upon the foregoing fifth class, it has been deemed expedient that the remarks upon the one should follow those of the other. Among the claims under the sixth class, the commissioners had no hesitation in totally rejecting such as appeared to have occasioned no actual loss; for they considered that the temporary occupation of Buildings, &c. having merely caused a certain inconvenience for the time so occupied, it should be ranked among those casualties, of the seat of war, which every loyal subject ought cheerfully to submit to, for the general defence of the province, without further indemnification, than that of being remunerated for any actual damages which such building might have sustained during such occupation—a proportionate allowance for stated damages has therefore been awarded. In other cases, where the occupation continued so long as to occasion a palpable loss, reasonable allowances for rent have been made, but in general very disproportioned to the amounts claimed, from the circumstance of the parties concerned having affixed an unreasonable estimate of the rental, in some instances so enormous, as would, at seven years' purchase, have amounted to the full value of the property. It is also to be remarked that many of these claims, like those of the preceding sixth class, would doubtless

have been paid out of the military chest, but for some informality or neglect of the claimant in not regularly applying to the proper department for liquidation.

The seventh class decided inadmissible, are claims for loss of crops left ungathered, the owners being absent on military duty—two considerations influenced the commissioners in this decision, and which, if left unexplained, might subject them to a charge of unfeelingness toward many, perhaps highly deserving and much to be pitied, claimants. None can more truly commiserate the sufferings of individuals than the commissioners, but having an important duty to perform to the government and the public, paramount to all other feeling, they conscientiously endeavor to obey its dictates. The first consideration adverted to, was the dangerous precedent it would furnish in future cases of a state of warfare, tending to slacken the exertions of those of the family left at home, in their endeavor to secure those crops, for the chief inducement would be removed, if they felt the certainty of remuneration, without the labor of harvesting—the second consideration was, that there is every reason to believe, that the claims under this head, scarcely embrace a twentieth part of the sufferers, similarly situated; from which it is presumed, that those who have forborne to prefer claims accordingly, have justly considered this description of loss, as one of those unavoidable evils of a state of warfare, which every subject must take his chance of. What then would be the probable consequence of a partial remuneration upon this head? why, that those, who, from patriotic feelings, have hitherto forborne to come forward with similar claims, would, if these, now before the commissioners, were allowed, be tempted to memorial the government to to be alike remunerated, having the claim strengthened, by the example of forbearance which they had originally set to their fellow subjects.

The eighth class decided inadmissible, are claims by non commissioned officers, and others in his Majesty's regular forces, for loss of property in garrisons or cantonments in which they were quartered; upon these claims, the

commissioners had no hesitation in deciding (in conformity to the opinion entertained by the former board of claims) that the individuals who had thus unfortunately suffered, could have no just claim whatever, upon the sources from which remuneration to the inhabitants of the province, was to be derived; for his Majesty having most graciously established certain rules in the service, by which every individual composing it, may be remunerated from the military chest for losses on service, according to a proportionate scale therein, laid down for the several ranks, (if properly certified by the heads of departments,) the committee could not, consistent with their duty to the government and the public, admit of two sources of remuneration. In cases, however, where such individuals have sustained losses upon their fixed property as inhabitants of the province, they have, of course been awarded a proportionate remuneration in common with their fellow subjects.

Under the foregoing class of claims deemed inadmissible, may be further classed, a few isolated claims by officers of the Provincial militia, for loss of baggage and arrears of pay and allowances, which the commissioners could not conscientiously admit among their awards, being fully apprized, that special boards had already been appointed to determine the justice of all such claims.

The commissioners, having thus recapitulated, by classes, most of the cases by them deemed inadmissible, beg leave to remark, that there are other isolated cases similarly decided, but which would extend the general report to too great a length, were they separately to be detailed here; they therefore respectfully refer to the accompanying copy of their voluminous proceedings, for their several decisions upon each particular claim. At the same time, it may be proper to notice generally, that most of the claims for horses, stated to have died in the service, have also been declared inadmissible, in consequence of the very unsatisfactory proofs of *that* service, being the sole cause of their deaths; for it is scarcely possible, that in very many of the cases of claims upon this head.

which have come before the commissioners, if common care had been taken of the animals by the drivers of them and who, for the most part, were either the owners themselves or men deputed by the owners, that from the short journeys the animals had performed, and the description of loading which they drew, that if they had been originally fit for the service, they would not so soon have terminated their career; and the commissioners therefore conceived it would be scarcely fair to burthen the public with losses arising either from the neglect of the drivers, the original incapacity of the animals, or the cupidity of the owners of them, in being tempted by the then high rates of hire, from giving that occasional respite from the labours of their animals which the irregular feeding in those times, rendered more particularly indispensable—but besides all these considerations, the commissioners could not lose sight of the dangerous precedent, which, an indiscriminating allowance upon this head would furnish, in any future similar contingency, to the extreme prejudice, both of his Majesty's service, as well as of the public, who would be pecuniarily injured thereby, for it would have the effect of encouraging all teamsters to bring forward every worn out, ineffective animal in the country they could meet with, as a productive riddance of all such. All claims upon the foregoing head, that in the mature opinion of the commissioners, from the particular circumstances of the loss, could possibly justify a favorable decision, have received it. Before quitting the subject of claims deemed, either wholly or in part inadmissible, it may be proper to notice that a few, (and happily for the province, very few) have met with the former decision, in consequence of the alledged notorious disloyalty of the claimants—to this point the notice of the commissioners was particularly directed, by the recorded decision of the former board of claims, for it could not be supposed, that at this distance of time, the present commissioners could have at all entered into that proper discrimination which the respectable members, composing that board, were then enabled to do—the present commissioners therefore felt it to be so far their duty to pay respect

to that former record, as to require satisfactory proofs, that the former suspicions which produced that record, were erroneously entertained—the result has been favorable to many claims thus circumstanced, but in cases where the required proofs of the contrary have been deemed unsatisfactory, the former decisions have been confirmed; and this with the most perfect conviction of the propriety of the principle adopted by that board: for when the safety of a country may be said to be at stake, it cannot for one moment be a question, whether the *defenders of* or *deserters from* its interests are to be alike remunerated for any losses sustained.

Having thus gone through their explanations upon those cases of claims deemed wholly or in part inadmissible, the next circumstance which the commissioners feel it their duty to notice, is the reduction they have made upon claims for damages done to places of worship.

Under more favourable circumstances of the province, this would not have been made, but as from that consideration they have been governed by a general principle of making a deduction from every claim (more or less according to the moderation, or otherwise of the claimants estimate) the commissioners did not feel justified in making any distinction, even upon this head, considering that the respective congregations whom they concerned, should, as well as individual sufferers, sustain some share in the general sacrifice. There are a few solitary exceptions to this general rule of reduction, arising from the estimate of the claimant, not exceeding the scale of values adopted by the commissioners, as noticed in the first part of this report: to have reduced such claims would have been injustice.

The commissioners are not aware of having, in their foregoing detail, omitted any point which called for particular elucidation, and they now proceed to explain in justification of their general proceedings, that the trouble which they have occasioned the different claimants, in requiring either written or verbal affidavits in all cases where a less solemn testimony had been admitted by the

former board of claims, arose from a conscientious impression that by the tenor of the act, under which they were constituted, it was their bounden duty so to do; and although not actually designated by that act as a board of revision, yet, virtually they necessarily became such, for as by far the greater number of the claimants declared the impossibility (from their neglect in preserving copies of their former claims) to make them out afresh. The commissioners were compelled, in all such cases to admit the application for reference to those former ones: indeed this reference has proved of infinite advantage to the public; for it has enabled the commissioners to detect the introduction of all additional claims, and in all such cases of discovery, they have felt it an imperious duty to require the most satisfactory reasons to be assigned for their not having been preferred before the former board, and this in order to guard against the introduction of increasing demands against the public, to the prejudice of the old original claimants. It may be proper to observe, with reference to the minutes of their general proceedings, that the evidence upon those claims which were originally preferred before the board which sat at Sandwich in the year 1815, having, (as appears by the report of that board) been already supported by sufficient oral testimony *upon oath*, it was not deemed necessary by the present commissioners, to trouble the parties in such cases for a repetition of their former evidence.

The commissioners venture to hope, that the foregoing detail will be received as a proof that they have devoted their abilities to the utmost with the sincerest endeavour to perform their important duty satisfactorily to Your Excellency, never ceasing to hold in view the ruinous consequence of creating dangerous precedents. This feeling may perhaps, in some cases, have produced decisions which, under other circumstances, might appear harsh, but where the interests of a whole community are concerned, those of a few individuals must succumb. As a proof of the zeal and perseverance with which the commissioners have been actua-

ted, from the very beginning of their labours, they beg leave to notice, that in the very first claim which came before them, they succeeded, after a most laborious, baffling investigation, in detecting a flagrant perjury and fraud, by a claimant named John Farmer, to the intended injury of another claimant; a warrant for the apprehension of the offender was in consequence applied for, from the dread of which, he timely absconded, or the commissioners would have felt it their duty to have prosecuted him, as well to procure punishment for the grosser offence, as for the opportunity it would have afforded of exposing the fraud which that perjury embraced.

The commissioners feel it their duty to notice, that many individuals who preferred claims before the former board, have not come forward upon the present occasion to renew them, and the only reason for the commissioners deeming it expedient to advert to the circumstance, is, lest an erroneous estimate should be formed of the total amounts claimed and awarded under the present board, contrasted with the former one,—and lest the result of any measures, which may be adopted for the liquidation of the several awards made by the commissioners of the present board, should be founded upon a supposition that this report embraces every claim that has ever been submitted to the government. The close of this report will therefore notice not only the number of claims decided upon by the commissioners, with the aggregate amount of sums claimed and awarded thereupon, but also the number and amount of claims left undecided, in consequence of inattention to the demands of the board for further evidence, together with the number and amount of those claims submitted to the former board, which have been referred to the present commissioners, but which are now lying dormant in consequence of no application from the parties concerned, to take them under consideration.

With reference to these latter, the commissioners feel it their duty to state that they did not fail to adopt every

7

means which occurred to them of giving general information of their days of meeting, and which for the convenience of the public, were held on Tuesday, Thursday and Friday in each week until the necessity for that frequency no longer existed; it therefore has been wholly owing to the neglect of the claimants themselves (in not coming forward as invited by the several advertisements of the board, both in the public newspapers as well as by printed handbills circulated throughout the Province) that the commissioners have been prevented from making this report at an earlier period.

The commissioners cannot conclude their report without an expression of regret at circumstances having latterly deprived them of the valuable assistance of their much esteemed coadjutor, William Allan, Esq. whom private affairs have called to a temporary absence from the province; but they have the satisfaction of knowing that the sentiments embodied in this statement, would have met with his hearty concurrence from their being in unison with the general principles which

he assisted in originally establishing, and which form the ground work of the present report—in closing which, they feel it a pleasing duty and an act of justice to the individual whom it concerns, to bring under the favorable notice of Your Excellency, the very able, zealous, indefatigable assistance, which they have derived from the laborious exertions of the Secretary to the board, James B. Macaulay, Esq. and which assistance has been rendered still more valuable by the additional aid of his professional abilities—an advantage which from the nature of many of the cases that came under the consideration of the board, was very sensibly felt by the commissioners, thereby increasing his claim upon their unqualified approbation of his services.

ALL WHICH IS MOST RESPECTFULLY SUBMITTED.

York, Upper Canada, 6th January, 1825.

(Signed.) JOSEPH WELLS.

L. FOSTER.

A. BALDWIN.

THOMAS RIDOUT.

GENERAL ABSTRACT referred to in the preceding Report.

	No. of claims.	Amount claimed.			Amount awarded.		
		£	s.	d.	£	s.	d.
Number of claims decided upon, - - - - -	1,844	404,828	1	6	193,038	14	0
Number of claims not decided upon, - - - - -	30	2,198	0	5			
Total number of claims entered in the three volumes of proceedings which accompany the preceding report, - - - - -	1,874	407,026	1	11	193,038	14	0
Number of claims not yet taken into consideration in consequence of the parties concerned not having made the necessary application for that purpose, - - -	509	25,818	5	1			
Number of new claims not decided upon the further evidence required thereon, together with satisfactory reasons for their not having been submitted to the former board not having been yet received, - - - - -	90	17,033	4	7			
General Total of the number of claims, of the several sums claimed, and of the amount awarded to the present date, - - - - -	2,473	449,877	11	7	193,038	14	0

York, Upper Canada, 6th January, 1825.

(SIGNED.) JOSEPH WELLS.
L. FOSTER.
A. BALDWIN.
THOMAS RIDOUT.

REPORT

OF

COMMISSIONERS,

Appointed to investigate the claims of certain inhabitants of this Province for losses sustained by them, during the late war with the United States of America, and for other purposes therein mentioned.

By order of the House of Assembly.

PRINTED BY J. CAREY—YORK, U. C.

Queen's University at Kingston



The EDITH and LORNE PIERCE
COLLECTION of CANADIANA

Purchased from the
CANADIANA

